



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 33253989

Date: AUG. 27, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an omakase chef, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual’s occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner explains that “omakase is a type of formal Japanese dining” in which, rather than selecting items from a menu, diners leave the meal entirely to the chef’s discretion. The Petitioner, currently classified as an E-2 nonimmigrant treaty investor, has operated three restaurants in California. His first restaurant operated in [ ] from 2005 to 2007, followed by a restaurant in [ ] from 2007 to 2018. Since 2019, he has operated an omakase sushi restaurant in [ ]. The Petitioner asserted that his latest restaurant “has been ranked among the top 100 restaurants in the U.S. and among the top 25 omakase dining experiences in the U.S. in [ ]” The Petitioner’s restaurant was included in the *Michelin Guide* in [ ]<sup>1</sup>

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed to have satisfied five of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Petitioner also claimed to have submitted comparable evidence under 8 C.F.R. § 204.5(h)(4).

The Director concluded that the Petitioner met the criterion relating to a leading or critical role. On appeal, the Petitioner asserts that he meets all five claimed criteria and that he has submitted comparable evidence.

We agree with the Director’s conclusion that the Petitioner had established that he performs in a leading or critical role for an organization or establishment with a distinguished reputation, satisfying the requirements of 8 C.F.R. § 204.5(h)(3)(viii). The record establishes the prestige of a listing in the *Michelin Guide*, indicating that the Petitioner’s restaurant has a distinguished reputation. As the owner and chef of the restaurant, the Petitioner performs in a leading role for the establishment.

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<sup>1</sup> The record indicates that anonymous evaluators dine at candidate restaurants, and that listed restaurants receive between zero and three stars. The Petitioner’s restaurant did not receive any stars in the *Guide*’s three-star rating system, but the Petitioner asserted that “earning a mention in the guide is an honor in itself.”

We also conclude that the Petitioner has satisfied the requirements of 8 C.F.R. § 204.5(h)(3)(ix), by submitting evidence that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The Director's conclusion that the Petitioner had not satisfied this requirement rested in part on the conclusion that the Petitioner owned several restaurants at the time of filing. But the record does not support this conclusion. The Petitioner's résumé lists his ownership of three restaurants, but in succession rather than all at once. His current restaurant is his only documented source of income. Therefore, the record demonstrates that the Petitioner has met this criterion as well.

We will discuss the other claimed criteria below.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).*

The Petitioner initially claimed that his [ ] restaurant's inclusion in lists published by several newspapers and websites amount to his receipt of qualifying prizes and awards. The user-review site *Yelp* ranked the Petitioner's restaurant at number [ ] on its list of the "Top 100 US Restaurants [ ]". While the *Yelp* list is national, the other published lists are limited to restaurants in [ ] California. For example, the [ ] *Register* ranked the Petitioner's restaurant ninth on its list of [ ] "10 best new restaurants of the year" in 2019.

The Director concluded that the Petitioner had not submitted any evidence to show that he had received any identified prizes or awards relating to, or arising from, his restaurant's various listings. On appeal, the Petitioner contends that his restaurant's listing in the prestigious *Michelin Guide* should be considered a qualifying prize or award, or as comparable evidence of one.

We agree with the Director that the Petitioner did not establish that he received a prize or award as a result of his restaurant's *Guide* listing, or that the listing itself constitutes a prize or award. For us to consider the *Guide* listing as being comparable to a prize or award, the burden is on the Petitioner to establish that the criterion does not readily apply to his occupation. See 8 C.F.R. § 204.5(h)(4). A general unsupported assertion that a particular evidentiary criterion does not readily apply to a petitioner's occupation is not probative. See generally 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

Seeking to establish the prestige of a restaurant critic who had praised the Petitioner's restaurant, the Petitioner submitted evidence showing that the critic received James Beard Awards. But the Petitioner's materials also indicate that there is a "Restaurant and Chef" category of James Beard Awards, "[k]nown as the 'Oscars of the food world.'" Because the Petitioner submitted evidence indicating that recognized awards exist in his occupation, in the absence of further documentation, we would not consider evidence such as the *Michelin Guide* listing to be comparable to prizes or awards.

The Petitioner has not met the requirements of this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).*

The Petitioner contended that his restaurant's inclusion in the *Michelin Guide* satisfies this criterion, because only a select few restaurants receive entries in the *Guide*. Materials from Michelin in the record do not indicate that *Guide*-listed establishments, or their owners or chefs, are members of any association as a result of their inclusion in the *Guide*.

The Director concluded that "the inclusion of a restaurant in an eating guide is not considered membership in an association," and that the Petitioner had not established that the restaurant's inclusion in the *Guide* resulted from the Petitioner's outstanding achievements in the field as judged by recognized national or international experts.

On appeal, the Petitioner asks that we consider his restaurant's listing in the *Michelin Guide* "as other comparable evidence" relative to membership in an association, because "[i]nclusion in the Michelin Guide is akin to . . . gaining membership in an elite, highly selective group." As above, for us to consider the Guide listing as comparable evidence to membership in an association, the Petitioner must establish that the criterion does not readily apply to his occupation. The Petitioner, on appeal, does not explain how, or even directly assert that, the criterion does not readily apply to chefs in general or to omakase chefs in particular.

The Petitioner has not met the requirements of this criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).*

In evaluating whether a submitted publication is major media, relevant factors include the relative circulation, readership, or viewership. *See generally 6 USCIS Policy Manual, supra*, at F.2(B)(1).

The Petitioner initially submitted articles and "best of" lists from several local [REDACTED] [REDACTED]-area publications, and showed that the online review platform *Yelp* included the Petitioner's restaurant in two annual national "best of" listings. The Petitioner stated that "the information on readership and reach attached with each article" demonstrated that the submitted materials appeared in major media.

Those materials describe local media. For instance, according to the newspaper's own website, "[t]he [REDACTED] *Register* is . . . focused on serving [REDACTED] and helping it thrive." Information from the *Eater* website refers to "23 city sites tracking local dining scenes." Material about the Petitioner's restaurant appeared on one of those city sites, [REDACTED] Many of the articles are local "best of" lists, which tends to emphasize the local focus of the publications.

In a request for evidence (RFE), the Director stated that the Petitioner's evidence did not "establish the major media status of these publications." In response, the Petitioner submitted web traffic statistics for some of the websites. The submitted information shows that *Yelp* receives hundreds of millions of visits per month. The Petitioner's restaurant ranked at [REDACTED] in "Yelp's Top 100 US Restaurants [REDACTED]" The article does not provide the author credit required by 8 C.F.R. § 204.5(h)(3)(iii), either for the article

overall or for the twelve sentences about the Petitioner and his restaurant. Likewise, the Petitioner's *Michelin Guide* entry, not initially claimed as major media, lacks the required author credit. The Petitioner's *Guide* entry has received due weight and consideration elsewhere in our decision.

The Petitioner submitted a *SimilarWeb* printout showing that the website for the [REDACTED] *Register* receives over three million visits per month. The printout indicates that no data is available for "Monthly Unique Visitors," and thus the figure provided does not distinguish between repeat and unique visitors. Therefore, the total number of monthly visits is not necessarily a reliable indicator of the number of people visiting the site, and thus of the newspaper's online circulation. The *SimilarWeb* printout describes the same local focus as the *Register* claims on its own website, and gives the *Register* a "Global rank" of #23,289; "Country rank" of #4,617 in the United States; and "Industry rank" of #2,235 among "News and Media." The burden is on the Petitioner to establish that these figures establish that the *Register* qualifies as major media. The *SimilarWeb* printout provides readership figures comparing the *Register* to four other California newspaper websites, and the *Register* ranks fourth, below the *Sacramento Bee* and the *Mercury News*, and less than a tenth of the readership of the *Los Angeles Times*.

In denying the petition, the Director concluded that the Petitioner had not adequately established that the published materials appeared in professional or major trade publications or other major media.

On appeal, the Petitioner states that the *Register*'s website "is online media therefore, it is reached by people all over the globe who might have interest in whatever they are reporting and who have internet access." The relevant information is how many people *do* read a particular online newspaper, rather than how many people *could* do so. See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1), which contemplates "relative circulation [or] readership."

The Petitioner states: "In the context of internet standards, determining what constitutes 'major media' involves evaluating several critical factors that distinguish significant digital platforms from smaller, niche, or less influential sources. These include reach, influence, credibility, professional standards, and more." The Petitioner cites no authoritative source for this proposed standard of "what constitutes 'major media'" in an online context.

The Petitioner has not satisfied the regulatory requirements for this criterion.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown a degree of recognition of his work that

indicates the required sustained national or international acclaim and demonstrates a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

In the denial notice, the Director stated: “The beneficiary intends to work as a Chef in the field of Culinary Arts.” On appeal, the Petitioner states that the Director’s description “is incorrect” because “the beneficiary is known for and has received critical acclaim specifically as a [sic] OMAKASE CHEF,” “a highly specialized form of Japanese cuisine,” “not as a general Chef in the whole broad field of culinary arts.” The Petitioner contends that “equating the Beneficiary’s specialized role to that of a general chef undermines the distinct and advanced talent involved.” In such a case, the burden is on the Petitioner to establish extraordinary ability not only as a chef, but as an omakase chef. The level of specialization of his stated occupation is not, itself, an indication of extraordinary ability or of sustained national or international acclaim.

Furthermore, the Petitioner’s own evidence is inconsistent in terms of distinguishing omakase chefs from other chefs. Much of the Petitioner’s own evidence relates to the Petitioner in the context of all chefs, rather than omakase chefs. For example, the Petitioner submitted Department of Labor salary information about “executive chefs,” rather than “omakase chefs.” Perhaps most significantly, the *Michelin Guide* does not limit its listings to omakase chefs. The Petitioner has not established that the Director’s broader reference to “Culinary Arts” prejudiced the outcome of the proceedings or showed that the Director did not sufficiently consider the evidence of record.

The record shows that, while the Petitioner’s restaurant is listed in the *Michelin Guide*, it has not been awarded any stars. The Petitioner asserts that a listing without stars is still a coveted honor, but the record indicates that stars significantly elevate a restaurant’s reputation. A printout from Michelin’s website, “Beyond Stars: What Does It Mean To Be A Michelin-Recommended Restaurant?,” reads, in part:

While a rating of one to three stars is most coveted by chefs and restaurateurs alike, what usually remains under the radar are the restaurants listed in the red book but have not been awarded a star. These places are, in fact, judged by the same five criteria used for starred and Bib Gourmand restaurants, and are recognised as establishments serving good food.

“A restaurant in the selection without a star or Bib Gourmand is the sign of a chef using quality ingredients that are well cooked; simply a good meal,” says Michael Ellis, International Director of the MICHELIN Guides.

“It means that the inspectors have found the food to be above average, but not quite at star or Bib level. One star (or more) indicates a truly gastronomic experience,” he continues.

Inclusion in the *Michelin Guide* attests to the quality of the restaurant’s food, and therefore to the Petitioner’s talent as a chef, but the Petitioner’s own evidence places particular emphasis on the prestige accorded to Michelin stars. The record indicates that inclusion in the *Guide* without stars is an endorsement of a restaurant’s quality, but does not rise to the level of acclaim contemplated in the statute and regulations.

The Petitioner's appellate brief discusses, at some length, the prestige of Michelin stars, and provides information about some well-known chefs whose restaurants have earned those stars. This information does not convey comparable prestige on the Petitioner's restaurant, which has not earned any stars, and it does not show that the Petitioner is as well-known as the chefs named on appeal.

The Petitioner also asserts that the *Guide* lists only a small fraction of all U.S. restaurants. This statistic is somewhat skewed, because the record shows that "Michelin only launches in select cities," as reported in a submitted article from *Raleigh Magazine*, which indicated that, as of 2022, Michelin's coverage of the United States was limited to New York City and Westchester County; Chicago; Washington, D.C.; California; and southern Florida. The Petitioner has not shown that Michelin has sent inspectors to every restaurant even in those limited areas.

The Petitioner's media coverage has, likewise, mostly been regional, in  publications. This coverage indicates that the Petitioner's restaurant is locally popular and well-regarded, but the record does not consistently show broader recognition at the national or international level. Michelin has recognized the quality of the Petitioner's work, but the Petitioner's evidence as a whole does not show recognition that rises to the level of sustained national or international acclaim.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.